

**FILED**  
DISTRICT COURT OF GUAM

JUN 13 2006

MARY L.M. MORAN  
CLERK OF COURT

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

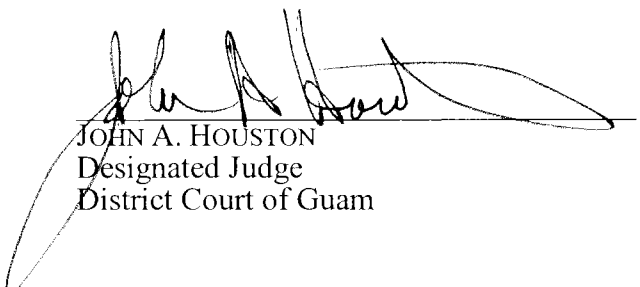
KUANG-HUA CHEN,

Defendant.

Criminal Case No. 04-00008

~~PROPOSED~~ FINAL JURY INSTRUCTIONS

Dated: June 13, 2006.

  
JOHN A. HOUSTON  
Designated Judge  
District Court of Guam

\*The Honorable John A Houston, United States District Judge for the Southern District of California, by designation.

## INSTRUCTION NO. 1

## DUTIES OF JURY TO FIND FACTS AND FOLLOW LAW

Members of the jury, now that you have heard all the evidence and the arguments of the lawyers, it is my duty to instruct you on the law which applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to find the facts from all the evidence in the case. To those facts you must apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. And you must not be influenced by any personal likes or dislikes, opinions, prejudices or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return -- that is a matter entirely up to you.

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1 N-dimethylamphetamine hydrochloride, a schedule I controlled substance, in violation of Title  
2 21, United States Code, Sections 841(a)(1) and 841(b), and Title 18, United States Code, Section  
3 2.

4       The superseding indictment is not evidence. The defendant has pleaded not guilty to the  
5 charges. The defendant is presumed to be innocent and does not have to testify or present any  
6 evidence to prove innocence. The government has the burden of proving every element of the  
7 charges beyond a reasonable doubt.

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**INSTRUCTION NO. 3**  
**DEFENDANT'S DECISION NOT TO TESTIFY**

A defendant in a criminal case has a constitutional right not to testify. No presumption of guilt may be raised, and no inference of any kind may be drawn, from the fact that the defendant did not testify.

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**INSTRUCTION NO. 4**  
**REASONABLE DOUBT - DEFINED**

Proof beyond a reasonable doubt is proof that leaves you firmly convinced that the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

1 **INSTRUCTION NO. 5**

2 **WHAT IS EVIDENCE**

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4 The evidence from which you are to decide what the facts are consists of:

- 5 (1) the sworn testimony of any witness;
- 6 (2) the exhibits which have been received into evidence; and
- 7 (3) any facts to which all the lawyers have stipulated.
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1 **INSTRUCTION NO. 6**  
2 **WHAT IS NOT EVIDENCE**  
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4 In reaching your verdict you may consider only the testimony and exhibits received into  
5 evidence. Certain things are not evidence and you may not consider them in deciding what the  
6 facts are. I will list them for you:

7 1. Arguments and statements by lawyers are not evidence. The lawyers are not  
8 witnesses. What they have said in their opening statements, closing arguments and at other times  
9 is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember  
10 them differ from the way the lawyers have stated them, your memory of them controls.

11 2. Questions and objections by lawyers are not evidence. Attorneys have a duty to their  
12 clients to object when they believe a question is improper under the rules of evidence. You  
13 should not be influenced by the objection or by the court's ruling on it.

14 3. Testimony that has been excluded or stricken, or that you have been instructed to  
15 disregard, is not evidence and must not be considered. In addition, some testimony and exhibits  
16 have been received only for a limited purpose; where I have given a limiting instruction, you  
17 must follow it.

18 4. Anything you may have seen or heard when the court was not in session is not  
19 evidence. You are to decide the case solely on the evidence received at the trial.  
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**INSTRUCTION NO. 8**  
**CREDIBILITY OF WITNESSES**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it. In considering the testimony of any witness, you may take into account:

1. the opportunity and ability of the witness to see or hear or know the things testified to;
2. the witness' memory;
3. the witness' manner while testifying;
4. the witness' interest in the outcome of the case and any bias or prejudice;
5. whether other evidence contradicted the witness' testimony;
6. the reasonableness of the witness' testimony in light of all the evidence; and
7. any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify.

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**INSTRUCTION NO. 11**  
**STATEMENTS BY DEFENDANT**

        You have heard testimony that the defendant made statements. It is for you to decide (1) whether the defendant made the statements and (2) if so, how much weight to give to it. In making those decisions, you should consider all of the evidence about the statement, including the circumstances under which the defendant may have made it.

1 **INSTRUCTION NO. 12**

2 **TRANSCRIPT OF RECORDING IN FOREIGN LANGUAGE**

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4 You have listened to tape recordings in the Chinese language. Each of you were given  
5 transcripts of the recordings which have been admitted into evidence. The transcripts are a  
6 translation of the foreign language tape recordings.

7 Although some of you may know Chinese, it is important that all jurors consider the same  
8 evidence. Therefore, you must accept the English translation contained in the transcript and  
9 disregard any different meaning.

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1                                   **INSTRUCTION NO. 14**

2                                   **OTHER CRIMES, WRONGS, OR ACTS OF DEFENDANT**

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4           You have heard evidence of other wrongs engaged in by the defendant. You may

5 consider that evidence only as it bears on the defendant's intent, knowledge, absence of mistake

6 or accident and for no other purpose.

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**INSTRUCTION NO. 15**  
**DEPOSITION AS SUBSTANTIVE EVIDENCE**

A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath to tell the truth and lawyers for each party may ask questions. The questions and answers are recorded.

The deposition of Hung Chang Yeh, which was taken on March 30, 2006, was presented to you. Deposition testimony is entitled to the same consideration and is to be judged, insofar as possible, in the same way as if the witness had been present to testify.

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**INSTRUCTION NO. 18**

**EYEWITNESS IDENTIFICATION**

In any criminal case, the government must prove beyond a reasonable doubt that the defendant was the perpetrator of the crime[s] alleged.

You have heard testimony of eyewitness identification. In deciding how much weight to give to this testimony, you may take into account the various factors mentioned in these instructions concerning credibility of witnesses.

In addition to those factors, in evaluating eyewitness identification testimony, you may also take into account:

1. the capacity and opportunity of the eyewitness to observe the offender based upon the length of time for observation and the conditions at the time of observation;
2. whether the identification was the product of the eyewitness' own recollection or was the result of subsequent influence or suggestiveness;
3. any inconsistent identifications made by the eyewitness;
4. whether the witness had known or observed the offender at earlier times; and
5. the totality of circumstances surrounding the eyewitness' identification.

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**INSTRUCTION NO. 19**  
**OPINION EVIDENCE, EXPERT WITNESS**

You have heard testimony from persons who, because of education or experience, are permitted to state opinions and the reasons for their opinions.

Opinion testimony should be judged just like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness' education and experience, the reasons given for the opinion, and all the other evidence in the case.

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**INSTRUCTION NO. 20**  
**ACTIVITIES NOT CHARGED**

The defendant is on trial only for the crimes charged in the superseding indictment, not for any other activities.

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**INSTRUCTION NO. 21**

**SEPARATE CONSIDERATION OF MULTIPLE COUNTS - SINGLE DEFENDANT**

A separate crime is charged against the defendant in each count of the superseding indictment. You must decide each count separately. Your verdict on one count should not control your verdict on any other count.

**INSTRUCTION NO. 22**  
**CONSPIRACY—ELEMENTS**

The defendant is charged in Count I of the superseding indictment with conspiracy to import methamphetamine hydrochloride also known as “ice,” in violation of Sections 952(a), 960, and 963 of Title 21 of the United States Code. Count III of the superseding indictment charges a separate conspiracy; conspiracy to distribute methamphetamine hydrochloride also known as “ice,” in violation of Sections 841(a)(1), 841(b) and 846 of Title 21 of the United States Code. In a moment I will discuss the elements of each of these offenses which the government must prove beyond a reasonable doubt.

First, however, I shall discuss with you what a “conspiracy” is under the laws of the United States. A conspiracy is a kind of criminal partnership—an agreement of two or more persons to commit one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not matter whether the crime agreed upon was committed.

For a conspiracy to have existed, it is not necessary that the conspirators made a formal agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another. You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed to commit.

One becomes a member of a conspiracy by willfully participating in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy, even though the person does not have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator. Similarly, a person does not become a conspirator merely by associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy exists.



1 In order for the defendant to be found guilty of that charge, the government must prove  
2 each of the following elements beyond a reasonable doubt:

3 As to Count I, the government must prove beyond a reasonable doubt each of the  
4 following elements:

5 First, beginning on or about January 3, 2003, and continuing up to and including  
6 September 7, 2003, there was an agreement between two or more persons to commit the crime of  
7 importation of methamphetamine hydrochloride; and

8 Second, the defendant became a member of the conspiracy knowing of at least one of its  
9 objects and intending to help accomplish it.

10 As to Count III, in order for the defendant to be found guilty of that charge, the  
11 government must prove beyond a reasonable doubt each of the following elements:

12 First, beginning on or about January 3, 2003, and continuing up to and including  
13 September 7, 2003, there was an agreement between two or more persons to commit the crime of  
14 distribution of methamphetamine hydrochloride; and

15 Second, the defendant became a member of the conspiracy knowing of at least one of its  
16 objects and intending to help accomplish it.

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## CONSPIRACY- KNOWING OF AND ASSOCIATION WITH OTHER CONSPIRATORS

A conspiracy may continue for a long period of time and may include the performance of many transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the names, identities, or locations of all of the other members.

Even though a defendant did not directly conspire with other conspirators in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if it is proved beyond a reasonable doubt that:

- (1) the defendant directly conspired with one or more conspirators to carry out at least one of the objects of the conspiracy,
- (2) the defendant knew or had reason to know that other conspirators were involved with those with whom the defendant directly conspired, and
- (3) the defendant had reason to believe that whatever benefits the defendant might get from the conspiracy were probably dependent upon the success of the entire venture.

It is no defense that a person's participation in a conspiracy was minor or for a short period of time.

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**INSTRUCTION NO. 24**  
**CONSPIRACY - SEARS CHARGE**

If you find that the defendant became a member of the conspiracy in counts one and/or three, you must also find that he did so with knowledge that persons other than the government informant, Tang, were or would be involved in the crime(s).

1                                   **INSTRUCTION NO. 25**  
2                                   **UNLAWFUL IMPORTATION**  
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4           The defendant is charged in Count II of the superseding indictment with unlawful  
5 importation of N, N-dimethylamphetamine hydrochloride in violation of Sections 952 and 960 of  
6 Title 21 of the United States Code. In order for the defendant to be found guilty of that charge,  
7 the government must prove each of the following elements beyond a reasonable doubt:

8           First, the defendant knowingly brought N, N–dimethylamphetamine hydrochloride into  
9 the United States; and

10          Second, the defendant knew that it was N, N-dimethylamphetamine hydrochloride or  
11 some other prohibited drug.  
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1 **INSTRUCTION NO. 28**

2 **POSSESSION**

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4 A person has possession of something if the person knows of its presence and has  
5 physical control of it, or knows of its presence and has the power and intention to control it.

6 More than one person can be in possession of something if each knows of its presence  
7 and has the power and intention to control it.  
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1                                   **INSTRUCTION NO. 29**

2                                   **AIDING AND ABETTING**

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4           A defendant may be found guilty of crimes charged in the second and fourth charges of  
5 the superseding indictment, even if the defendant personally did not commit the act or acts  
6 constituting the crime but aided and abetted in its commission.

7           Regarding the charges of the superseding indictment:

8           To prove a defendant guilty of aiding and abetting any particular crime charged in the  
9 second charge and/or the fourth charge of the superseding indictment, the government must  
10 prove beyond a reasonable doubt as to either or both charges:

11           First, that the crime was committed by someone;

12           Second, the defendant knowingly and intentionally aided, counseled, commanded,  
13 induced or procured that person to commit each element of the crime as charged in the second  
14 and/or fourth charges of the superseding indictment; and

15           Third, the defendant acted before the crime was completed.

16           It is not enough that the defendant merely associated with the person committing the  
17 crime, or unknowingly or unintentionally did things that were helpful to that person, or was  
18 present at the scene of the crime.

19           The evidence must show beyond a reasonable doubt that the defendant acted with the  
20 knowledge and intention of helping that person commit the crime.



## INSTRUCTION NO. 30

## ENTRAPMENT

The defendant claims he was entrapped by a government agent or informant. Someone is a government agent or informant when the government authorizes, directs, and supervises that person's activities and is aware of those activities.

The government has the burden of proving beyond a reasonable doubt that the defendant was not entrapped. The government must prove the following:

1. the defendant was predisposed to commit the crime before being contacted by government agents, or
2. the defendant was not induced by the government agents to commit the crime.

Where a person, independent of and before government contact, is predisposed to commit the crime, it is not entrapment if government agents merely provide an opportunity to commit the crime.

The government must prove that the defendant was disposed to commit the crime *prior* to being approached by the government. However, evidence gained after government contact with the defendant can be used to prove that the defendant was predisposed before the contact

In determining whether the defendant was predisposed to commit the crime before being approached by government agents you may consider the following:

1. the defendant's character and reputation;
2. whether the government initially suggested criminal activity;
3. whether the defendant engaged in activity for profit;
4. the nature of the government's inducement; and
5. any other factors related to predisposition.

1 **INSTRUCTION NO. 31**

2 **DATES**

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4 The superseding indictment charges that the crimes occurred on approximately a certain

5 date or between certain dates. The government does not have to prove that the crimes happened

6 on those exact dates. But the government must prove that the crime occurred reasonably close to

7 the dates alleged in the superseding indictment.

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1                                   **INSTRUCTION NO. 32**

2                                   **DUTY TO DELIBERATE**

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4           When you retire, you should elect one member of the jury as your foreperson. That  
5 person will preside over the deliberations and speak for you here in court.

6           You will then discuss the case with your fellow jurors to reach agreement if you can do  
7 so.

8           Your verdict, whether guilty or not guilty, must be unanimous.

9           Each of you must decide the case for yourself, but you should do so only after you have  
10 considered all the evidence, discussed it fully with other jurors, and listened to the views of your  
11 fellow jurors.

12          Do not be afraid to change your opinion if the discussion persuades you that you should.  
13 But do not come to a decision simply because other jurors think it is right.

14          It is important that you attempt to reach a unanimous verdict but, of course, only if each  
15 of you can do so after having made your own conscientious decision. Do not change an honest  
16 belief about the weight and effect of the evidence simply to reach a verdict.

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1 **INSTRUCTION NO. 34**

2 **USE OF NOTES**

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4 Some of you have taken notes during the trial. Whether or not you took notes, you should

5 rely on your own memory of what was said. Notes are only to assist your memory. You should

6 not be overly influenced by the notes.

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**INSTRUCTION NO. 35**  
**JURY CONSIDERATION OF PUNISHMENT**

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

1 **INSTRUCTION NO. 36**

2 **VERDICT FORM**

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4 A verdict form has been prepared for you. After you have reached unanimous agreement

5 on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and

6 advise the marshal or bailiff outside your door that you are ready to return to the courtroom.

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